



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 958 OF 2012

JANE W MACHARIA.....CLAIMANT

VERSUS

KENYATTA UNIVERSITY AND 3 OTHERS.....RESPONDENTS

RULING

1. The Judgment debtor filed a Notice of Motion Application dated 25th May, 2021 seeking an order in the following terms:-

1. *Spent*

2. *Spent*

3. ***This Honourable Court be pleased to issue an order for taking accounts for purposes of determining the correct and just amount due to the Claimant/Respondent on the decree issued on 7th May, 2021 and costs.***

2. The application is premised on grounds set out on the face of the Notice of Motion to wit; that on 23rd November, 2018, the Court vide Ongaya, J. issued judgment in favour of the Claimant/Respondent and awarded her Kshs585,370.50, interest at Court rates from date of filing suit till payment in full and costs of the suit.

3. That on 2nd April, 2021, the bill of costs was taxed at Kshs 208,671. That on 11/5/2021, the claimant issued the Respondent/Applicant with warrants of proclamation and attachment in execution of the decretal sum.

4. That on 20th May, 2021, the respondent paid the Claimant/Respondent the decretal sum less statutory deductions.

5. That the Claimant/Respondent proceeded to attach the Respondents/Applicant's property seeking to recover the money withheld as statutory deductions.

6. That the Respondents/Applicants are apprehensive that failure to remit the statutory deductions with respect to the claimant's award will attract punitive measures against it.

7. The claimant/respondent filed a notice of Preliminary Objection to the application dated 23rd September, 2021 as follows:-

1. ***The Applicant's Application herein is incurably defective and should be dismissed in limine as this Honourable Court lacks jurisdiction to entertain the said Application having been rendered functus officio.***

2. ***The Judgment and Decree in issue has since been fully executed and the Judgment Debtor discharged and the matter cannot be revived as it offends provisions of Rules 31, 32 and 33 of the Employment and Labour Relations Court (Procedure) rules, 2016.***

3. ***The Application is an abuse of the Court process and should be expunged from the Court record with costs to the Decree-Holder.***

8. The Respondent/Applicant filed further affidavit sworn to on 20th June 2021 in which is reiterated the contents of the Application and the Supporting Affidavit.

9. The deponent states that Section 49(2) of the Employment Act, 2007 obligates the 1st Respondent to withhold statutory deductions and to remit it to Kenya Revenue Authority, the intended interested party.

10. The applicant has further attached proof of payment to the claimant and a cheque for costs to the Auctioneer.

11. The Applicants states that it is obligated to remit the statutory dues to Kenya Revenue Authority and such money should not be subject of attachment.

Determination

12. It is clear that the suit was heard and determined and the judgment and Decree issued has since been fully executed and the judgment Debtor discharged. The suit is now *res judicata* and the Court cannot re-open the matter afresh.

13. However, both parties are bound by the provisions of Section 49(2) of the Employment Act, 2007 which provides:-

“Any payments made by the employer under this Section shall be subject to statutory deductions.”

14. It must be remembered that monies paid under this section include

terminal benefits pursuant to a Court order including any remuneration paid in arrears which was owed to a dismissed employee, and any compensation awarded to the employee in terms of the section.

15. The provision does not relate to any interest and/or costs awarded by the Court in line with the outcome of the suit.

16. On the submissions by the respondent that the judgment and the Decree in issue has since been fully executed and the Judgment Debtor discharged, the Court may no longer weigh in, on the matter and must accordingly down its tools.

17. Any of the parties which by fact of the judgment now owes Kenya Revenue Authority, must proceed to remit due taxes accordingly as a matter of Law and citizens' obligations to the nation of Kenya.

18. No order as to costs.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 10TH DAY OF FEBRUARY, 2022.

Mathews N. Nduma

Judge

Appearances

Mr. Mwangi for Respondent/Applicant

M/s Kihara for Claimant/Respondent

Ekale – Court Assistant